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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,600	10/22/2003	Rejean Lalumiere	PAT 902-2	3867
26123	7590	10/18/2004	EXAMINER	
BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			JIANG, CHEN WEN	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/689,600	Applicant(s) LALUMIERE ET AL.	
	Examiner Chen-Wen Jiang	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040116</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 1/16/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The information referred to the foreign patent documents is not in the application and therefore these patents have not been considered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,5 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laederach (DE 3203903).

Laederach discloses a method for cooling a refrigerated display case for foodstuffs and refrigerated display case. Referring to Figs. 1 and 2, a cooling duct 11 extends across the entire width of the display case and exit at outlet 11a. There are two refrigerant evaporators 13,14 arranged near the inlet slot 5. The evaporators are operated alternately, one is in cooling mode and the other is in defrosting mode. An insulating material 15 is provided between these two evaporators.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2,3,4,5,6,7,8,9,12,13,16,17,18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lego (U.S. Patent Number 5,704,221) in view of Laederach (DE 3203903).

In regard to claims 1,2,3,4,5,6,7,8,9,13,16,17,18 and 20, Lego discloses a refrigerating exchanger for a refrigeration facility such as a refrigerated display case. The refrigerating circulation means 5, and the heat exchanging means 6 are disposed in the form of battery having several layers 7 and several rows 8 and are arranged into a plurality of elements 9. Separations 10 provide some heat insulation between the elements 9. The system also comprises fins, refrigerant inlet 11, refrigerant outlet 12 and selective means 14. The selective means 14 comprise valves 15 and control means 16 of the valves 15. A refrigerant manifold distributor 20 is interposed downstream from the expansion valve 19 and between the single branch 18 and the plurality of branches 17 connected in parallel. By entire nominal output of the exchanger 1 is meant the output of the exchanger under normal operating conditions. Thus, at a given moment during the operation of exchanger 1, at least one of the elements 9 can be defrosting. However, Lego does not disclose the heat exchangers extensive along the display length and having common return. Laederach discloses the two heat exchangers extensive along the display length and having common return in the same field of endeavor for the purpose of distribution cooling

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air. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Lego with a the heat exchangers extensive along the display length and having common return in view of Laederach so as to distribution cooling air.

In regard to claims 6 and 7, the applicant should note that the selection of known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

In regard to claim 12, the provision of adjustability is not a patentable advance. In re Brant, 20 C.C.P.A. (Patents) 1005, 64 F.2d 693, 17 USPQ 295. Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundek, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220.

6. Claims 10,14,15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lego and Laederach as applied to claims 8,9,13 and 18 above, and further in view of Wolff et al. (U.S. Patent Number 5,924,297).

Lego and Laederach disclose the invention substantially as claimed. However, Lego and Laederach do not disclose solenoid valves and thermostatic expansion valves. Wolff et al. disclose solenoid valves and thermostatic expansion valves in the same field of endeavor for the purpose of control refrigerant. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Lego and Laederach with solenoid valves and thermostatic expansion valves in view of Wolff et al. so as to distribute refrigerant.

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7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lego and Laederach as applied to claims 8,9,13 and 18 above, and further in view of Tsuihiji et al. (U.S. Patent Number 5,031,413).

Lego and Laederach disclose the invention substantially as claimed. However, Lego and Laederach do not disclose filters in the system. Tsuihiji et al. disclose filter in the refrigeration system in the same field of endeavor for the purpose of cleaning refrigerant. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Lego and Laederach with filters in view of Tsuihiji et al. so as to keep refrigerant clean.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (703) 308-0275. The examiner can normally be reached on Tuesday-Friday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang
Primary Examiner

